

AN ORDINANCE approving AGREEMENT FOR
RESOLUTION 6325-94 between BROOKS
CONSTRUCTION CO., INC. and the City
of Fort Wayne, Indiana, in
connection with the Board of Public
Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF FORT WAYNE, INDIANA:

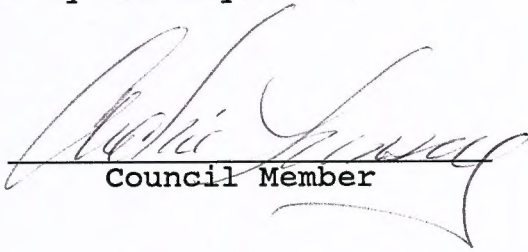
SECTION 1. That AGREEMENT FOR RESOLUTION 6325-94 by
and between BROOKS CONSTRUCTION CO., INC. and the City of
Fort Wayne, Indiana, in connection with the Board of
Public Works, for:

Collins Road: Speedway Drive to Coldwater
Road is for the improvement of Collins Road
from Speedway to Coldwater Road by
reconstructing Roadway which includes;
removing existing pavement and constructing
new bituminous or concrete (alternate)
pavement, concrete curbs, driveway approaches,
rehabilitate storm sewer system, pavement
markings and seeding restoration;

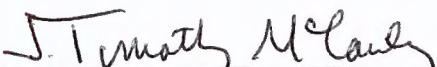
the contract price is Two Hundred Twenty-One Thousand Two
Hundred Thirty-One and 25/100 Dollars, (\$221,231.25).

SECTION 2. Prior Approval has been requested
from Common Council on APRIL 12, 1994. Two copies of
said Contract are on file with the Office of the City
Clerk and made available for public inspection, according
to law.

SECTION 3. That this Ordinance shall be in
full force and effect from and after its passage and any
and all necessary approval by the Mayor.


Council Member

APPROVED AS TO FORM
AND LEGALITY


J. Timothy McCaulay, City Attorney

AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is by and between the CITY OF FORT WAYNE, INDIANA (hereafter called OWNER) and BROOKS CONSTRUCTION CO., INC. (hereafter called CONTRACTOR). OWNER and CONTRACTOR, in consideration of the mutual covenants hereafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The project is generally described as follows:

RESOLUTION NO. 6325-94 - COLLINS ROAD:

SPEEDWAY DRIVE TO COLDWATER ROAD

ARTICLE 2. ENGINEER

The project has been designed by A.J. DODZIK, P.E. of Fort Wayne, Indiana, who is hereafter called ENGINEER and who is to act as OWNER'S representative, assume all duties and responsibilities and have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.1 The Work will be substantially completed within one hundred twenty (120) consecutive calendar days from the date when the Contract Time commences to run as provided in paragraph 2.3 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.13 of the General Conditions within one hundred fifty (150) consecutive calendar days from the date when the Contract Time commences to run.

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essences of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in a legal or arbitration proceeding. Accordingly, OWNER and CONTRACTOR agree that CONTRACTOR will pay as Liquidated Damages, a sum of two hundred fifty dollars (\$250) per day, beyond the time specified in paragraph 3.1 for Final Completion, until project is satisfactorily complete.

ARTICLE 4. CONTRACT PRICE

4.1 OWNER shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, in current funds, as follows: \$221,231.25. This Contract Price includes:

TOTAL PAVEMENT REPLACEMENT, CURBS, DRIVES, DRAINAGE
AND MISCELLANEOUS CONSTRUCTION

ARTICLE 5. PAYMENT PROCEDURES

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Application for Payment will be processed by ENGINEER as provided in the General Conditions.

5.1 Progress payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Application for Payment as recommended by ENGINEER, on or about the 25th day of each month during construction, as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.9 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

5.1.1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

Ninety five percent (95%) of Work completed.

Ninety five percent (95%) of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in paragraph 14.2 of the General Conditions).

5.1.2. Upon Substantial Completion, in an amount sufficient to increase total payments to CONTRACTOR to ninety eight percent (98%) of the Contract Price, less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.7 of the General Conditions.

5.2 Final Payment. Upon completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.13.

ARTICLE 6. INTEREST

All moneys not paid when due as provided in Article 14 of the General Conditions may bear interest at the maximum rate allowed by law at the place of the Project.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

In order to induce Owner to enter into the Agreement, CONTRACTOR makes the following representations:

7.1 CONTRACTOR has familiarized itself with the nature and extent of the Contract Documents, Work, site, locality and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

7.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.2 of the General Conditions, and accepts the determination set forth in paragraph SC-4.2 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.

7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.2 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.

7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examination, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.3 of the General Conditions.

7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to the CONTRACTOR.

ARTICLE 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 This Agreement (pages 1 to 5, inclusive).
- 8.2 Performance and Payment Bonds per the Project Manual.
- 8.3 Certificates of Insurance per the Project Manual.
- 8.4 Notice of Award.
- 8.5 The Project Manual including the General Conditions, Supplementary Conditions, any and all special requirements and/or provisions, specifications, construction standards and all other sections of the Project Manual except the Bid Documents.
- 8.6 Drawings (Plans), consisting of sheets numbered 1 through 14, inclusive.
- 8.7 Addenda Number(s) 1.
- 8.8 CONTRACTOR'S BID (pages P/1 to P/8, inclusive).
- 8.9 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying or supplementing the Contract Documents pursuant to paragraphs 3.4 and 3.5 of the General Conditions.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.5 of the General Conditions. The documents listed in Paragraphs 8.2 eg. seq. above are not attached to the Agreement but are to be maintained as a matter of record and reference at the office of the ENGINEER, CONTRACTOR and OWNER.

ARTICLE 9. MISCELLANEOUS

9.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions will have the meanings indicated in the General Conditions.

9.2 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but not without limitations, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

IN WITNESS WHEREOF, OWNER and CONTRACTOR have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR, and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This agreement will be effective on APRIL 27, 1994

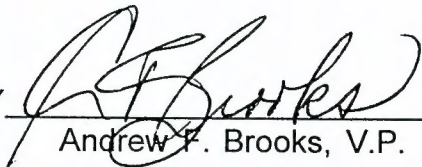
CONTRACTOR

OWNER

BROOKS CONSTRUCTION, CO, INC.

CITY OF FORT WAYNE, IN

BY

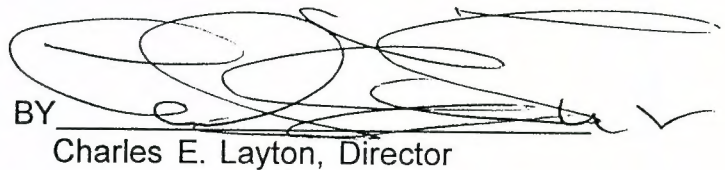

Andrew F. Brooks, V.P.

BOARD OF PUBLIC WORKS

Address for Giving Notices

6525 Ardmore Avenue
Fort Wayne, Indiana 46899

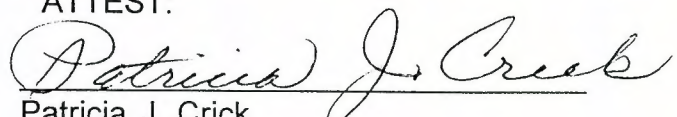
BY


Charles E. Layton, Director


C. James Owen

Katherine A. Carrier

ATTEST:


Patricia J. Crick
Clerk

E.B.E. RIDER

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as "Owner", and BROOKS CONSTRUCTION CO INC, hereinafter referred to as "Contractor",

WITNESSETH:

WHEREAS, Contractor is the apparent low bidder on construction project commonly referred to as the COLLINS ROAD: SPEEDWAY DR TO COLDWATER ROAD which project was bid under Resolution Number 6325-94; and

WHEREAS, Contractor agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as "E.B.E.'s" as subcontractors on this project is 10 % of the contract amount; and

WHEREAS, Owner has, pursuant to Executive Order 90-01 (as amended 12/19/91), adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order; and

WHEREAS, said Executive Order states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure the services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on

which he/she will provide a written description of the efforts taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award: Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, Owner awards the construction contract to the Contractor.

2. E.B.E. Retainage Requirements: If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten percent (10%) of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with this E.B.E. Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10% of the contract amount to emerging business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver: If at the time final payment application is made, contractor has not attained the 10 % E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver". Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10 % E.B.E. goal.

4. Determination of Waiver Requests: The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said Requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.

5. Good Faith Per Se. In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have

been subcontracted for every sub-contract for which there are qualified E.B.E.'s available.

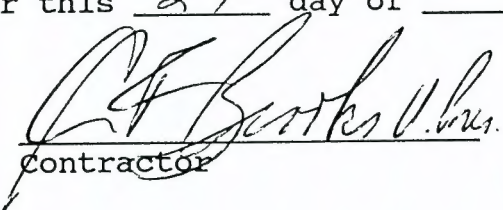
6. Consequence of Non-Compliance: In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10% and the percentage level met. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

7. Waiver Approved: In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

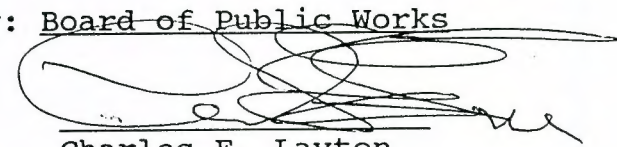
IN WITNESS WHEREOF, the parties have executed this E.B.E.

Rider this 27 day of APRIL, 1994.

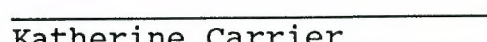
By:


Contractor

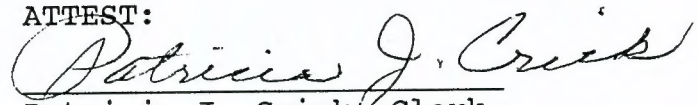
By: Board of Public Works


Charles E. Layton


C. James Owen


Katherine Carrier

ATTEST:


Patricia J. Crick, Clerk

Read the first time in full and on motion by Lunsey, seconded by _____, and duly adopted, read the second time by title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City County Building, Fort Wayne, Indiana, on _____, the _____ day of _____, 19____, at _____ o'clock _____ M., E.S.T.

DATED: 5-10-94

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Lunsey, seconded by _____, and duly adopted, placed on its passage.
PASSED LOST by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BRADBURY	<u>✓</u>			
EDMONDS	<u>✓</u>			
GIAQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
LUNSEY	<u>✓</u>			
RAVINE	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 5-24-94

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 2-44-94
on the 24th day of May, 1994

ATTEST:

(SEAL)

Sandra E. Kennedy

Clatus R Edmonds

SANDRA E. KENNEDY, CITY CLERK

PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 25th day of May, 1994, at the hour of 11:30 o'clock A. M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 26th day of May, 1994, at the hour of 2:30 o'clock P. M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

TITLE OF ORDINANCE: Agreement between the City and Brooks Construction Co., Inc., for Resolution No. 6325-94 - Collins Road: Speedway Drive to Coldwater Road.

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: The Agreement between the City and Brooks Construction Co., Inc., for Resolution No. 6325-94, Collins Road: Speedway Drive to Coldwater Road is for the improvement of Collins Road from Speedway to Coldwater Road by reconstructing Roadway which includes; removing existing pavement and constructing new bituminous or concrete (alternate) pavement, concrete curbs, driveway approaches, rehabilitate storm sewer system, pavement markings and seeding restoration. Brooks Construction Co., Inc. is the contractor. PRIOR APPROVAL RECEIVED ON 4/12/95.

EFFECT OF PASSAGE: Project can be completed.

EFFECT OF NON PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$221,231.25 (CREDIT BOND)

ASSIGNED TO COMMITTEE:

D-94-05-08

BILL NO. S-94-05-08

REPORT OF THE COMMITTEE ON
PUBLIC WORKS
ARCHIE L. LUNSEY - JANET G. BRADBURY - CO-CHAIR
CLETUS R. EDMONDS
SAMUEL J. TALARICO

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving Agreement for
Resolution 6325-94 between Brooks Construction Co., Inc. and the City of
Fort Wayne, Indiana, in connection with the Board of Public Works

HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

<u>Archie Lunsey</u>	_____	_____	_____
<u>Sam Talarico</u>	_____	_____	_____
<u>Janet Bradbury</u>	_____	_____	_____
<u>Cletus R Edmonds</u>	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

DATED: 5-24-94

Sandra E. Kennedy
City Clerk